

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ROBERT KITHER RUSSELL,)
)
 Plaintiff,)
)
 v.) 1:14CV736
)
GUILFORD COUNTY MUNICIPALITY,)
)
 Defendant(s).)

ORDER

The Recommendation of the United States Magistrate Judge was filed with the court in accordance with 28 U.S.C. § 636(b) and, on September 2, 2014, was served on the parties in this action. Petitioner filed a document entitled "Affirmations of the Recommendation of the U.S. Magistrate Judge." (Doc. 5.)

Petitioner's filing expressly adopts the findings of the Recommendation, which is to dismiss this action without prejudice to Petitioner filing a new action on the proper forms for actions under 42 U.S.C. § 1983. Petitioner also requests, however, that the court issue a writ of mandamus to the Guilford County Superior Court to adjudicate a motion for appropriate relief Petitioner claims to have pending there. Mandamus is a supervisory power of the federal court over a lower court; this federal court does not have mandamus power over a state court. See Cheney v. U.S. Dist. Court for Dist. of Columbia, 542 U.S. 367, 380-81 (2004). So, this request is

denied. Further, Petitioner requests that this action be stayed pending resolution of some matter in the State court. Insofar as this court will dismiss the action *sua sponte* pending Petitioner's filing of a new action on the proper forms which correct the defects cited by the Magistrate Judge, there is nothing to stay. This request is denied as well. Petitioner is warned that nothing in this Order tolls any statute of limitation that may apply to his claim, so he should be aware of the need to file any action timely.

The court has reviewed and hereby adopts the Magistrate Judge's Recommendation.

IT IS THEREFORE ORDERED that this action is filed and DISMISSED *sua sponte* without prejudice to the Plaintiff filing a new action, on the proper § 1983 forms, which corrects the defects cited in the Recommendation of the United States Magistrate Judge.

/s/ Thomas D. Schroeder
United States District Judge

September 22, 2014